

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

CHARLIE LEWIS THORNTON JR., Plaintiff, vs. WARDEN GROMER; OFFICER LEIDHOLT; OFFICER MCGOVERN; LT. MATTSON, Defendants.	4:18-CV-04151-KES ORDER GRANTING MOTIONS TO PROCEED IN FORMA PAUPERIS
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Plaintiff, Charlie Lewis Thorton Jr., is an inmate at the Minnehaha County Jail in Sioux Falls, South Dakota. Thorton filed a pro se civil rights complaint and requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. Dockets 1 and 2.

Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). The court may, however, accept partial payment of the initial filing fee where appropriate. Therefore, “ [w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceeding or over a period of time under an installment plan.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or
- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Thornton has not filed a prisoner trust account statement for this case, but he did file one for another case. Under that statement, he reported average monthly deposits to his prisoner trust account of \$45.06 and an average monthly balance of \$6.94. *Thornton v. Tuschen et al.*, 4:19-cv-4084-KES, Docket 3. Based on this information, the court grants Thornton leave to proceed in forma pauperis provided he pays an initial partial filing fee of \$9.01, which is 20 percent of \$45.06. Thornton must pay this initial partial filing fee by July 5, 2019. If the court does not receive payment by this deadline, this matter will be dismissed. Thornton may request an extension of time if needed.

In addition to the initial partial filing fee, Thornton must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the

prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the remaining installments will be collected pursuant to this procedure.

The clerk of the court will send a copy of this order to the appropriate financial official at Thornton's institution. Thornton will remain responsible for the entire filing fee, as long as he is a prisoner, even if the case is dismissed at some later time. *See In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997).

Thus, it is ORDERED

1. Thornton's motions for leave to proceed in forma pauperis (Dockets 2 and 6) are granted. **Thornton will make an initial partial payment of \$9.01 by July 5, 2019**, made payable to the Clerk, U.S. District Court. If the initial partial filing fee is not received by the specified deadline, the case **will be dismissed**.
2. After payment of the initial partial filing fee, Thornton's institution will collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2), quoted above, and will forward those installments to the court until the \$350 filing fee is paid in full.
3. The clerk of the court is directed to send a copy of this order to the appropriate official at Thornton's institution.
4. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: July 5, 2019: initial partial filing fee payment due.

5. Thornton will keep the court informed of his current address at all times. All parties are bound by the Federal Rules of Civil Procedure and by the court's Local Rules while this case is pending.

DATED this 5th day of June, 2019.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE